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Office of The Attorney General
State of Connecticut

July 27, 1995

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Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: PR Docket No. 94-106, Motion to Stay

Dear Mr. Caton:

Please find enclosed an original and four copies of the Reply Brief of the Connecticut Department of Public Utility Control and Richard Blumenthal, Attorney General of the State of Connecticut in Support of Motion to Stay.

Kindly contact the undersigned if you have any questions regarding this matter.

Sincerely yours,

Mark F. Kohler
Assistant Attorney General

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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In the Matter of	:	
	:	
Petition of the Connecticut Department	:	
of Public Utility Control to Retain	:	
Regulatory Control of the Rates of	:	PR Docket No. 94-106
Wholesale Cellular Service Providers in	:	
the State of Connecticut	:	July 27, 1995

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**REPLY IN SUPPORT OF MOTION FOR STAY OF
THE CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL
AND THE ATTORNEY GENERAL OF CONNECTICUT**

The Connecticut Department of Public Utility Control (the "DPUC") and Richard Blumenthal, Attorney General of the State of Connecticut (collectively, the "State Movants") respectfully submit this reply brief in response to the oppositions filed to the State Movants' Motion for Stay of the Commission's order denying the DPUC's petition to retain regulatory authority over cellular rates (the "Order"). The State Movants have been served with oppositions from Bell Atlantic NYNEX Mobile ("BANM"), Springwich Cellular Limited Partnership ("Springwich") and McCaw Cellular Communications, Inc. ("McCaw"). The State Movants take this opportunity to respond to those objections. For the following reasons and the reasons stated in their motion for stay, the State Movants are entitled to a stay of the Commission's Order.

I. THE STATE MOVANTS HAVE DEMONSTRATED THAT THE COMMISSION'S DENIAL OF THE DPUC PETITION SHOULD BE STAYED.

The public interest requires that the Commission stays the effect of its Order denying the DPUC's petition during the pendency of the State Movants' appeal. There are serious legal questions about the validity of the Commission's Order on which the State Movants' are likely to prevail. Moreover, irreparable injury will result in the absence of a stay.

The parties that have filed oppositions to the requested stay assert that the State Movants have failed to satisfy the standards for a stay. BANM asserts that the motion for stay is untimely. The argument is specious. It suggests that as the Commission's rules provide that any motion for reconsideration or modification must be made within 30 days of the date of the public notice of the order, the Commission is without authority to grant a stay. The State Movants' are not seeking reconsideration or to have the Order set aside or modified. Rather, the State Movants seek only to have the effectiveness of the Order stayed while they pursue their right to appeal the Order. The difference in the form of relief is obvious, and the State Movants are not barred from seeking the stay because it did not seek reconsideration within the 30 day time period for such petitions.

BANM, Springwich and McCaw all contend that the State Movants will not suffer harm in the absence of a stay and that they will suffer harm if in fact the Order is stayed. They all miss what is at the core of the State Movants' request for a stay. If the Order is allowed to remain in effect during the pendency of their appeal, the State Movants will have effectively lost the opportunity for any meaningful relief. The DPUC's Petition sought to continue regulation at most until July, 1996, and, after review of conditions at that time, a

further extension until October, 1997 if warranted by such review. Although the State Movants acknowledge that the U.S. Court of Appeals for the Second Circuit is very effective at moving the appeals on its docket to resolution, it is likely that the appeal of the Order will take a minimum of nine to twelve months. Thus, in the absence of a stay, a victory on appeal for the State Movants' will be proverbially pyrrhic.

The opposing parties contend that the State Movants have failed to show how consumers will be harmed. In particular, they argue that inasmuch as the DPUC has historically only regulated wholesale rates, there is no nexus with the retail rates paid by consumers. Thus, according to the opposing parties, consumer could not possibly be harmed by the absence of regulation of wholesale rates. The flaw in this analysis is apparent. The DPUC has consistently maintained in seeking continued regulatory authority that the evidence in Connecticut is that the wholesale carriers have engaged in anticompetitive practices. The evidence submitted by the DPUC demonstrates that, in the absence of regulation at the wholesale level, consumers will not be protected from unreasonable rates. The question is not merely whether rates will increase in the absence of regulation, as the opponents suggest. The real question is whether, free from regulatory oversight, the carriers will be able to engage in anticompetitive practices in ways that will result in unreasonable rates -- whether such unreasonableness takes the form of an actual increase or a failure to decrease to a reasonable level -- and, perhaps more importantly for the long term, that will prevent the effective transition to a competitive market. The evidence in the record shows this to be the case.

Springwich asserts that, as the status quo now is an unregulated environment, a reversion back to regulation as the result of a stay of the Order will harm it and consumers. It contends, as do the other opponents, that submission to DPUC regulation will impair its ability to prepare for the new entrants in the market and will result in consumer confusion. Springwich's claim of harm rings hollow. It maintains that the delay connected with tariff filings will prevent it from acting quickly and effectively. Any burden to the carriers under the DPUC's regulatory scheme would be minimal and is far outweighed by the harm to the State Movants' in the absence of a stay.

The central question presented by the DPUC's Petition is one of timing. The opponents contend that a stay should be denied for the same reason that they opposed the Petition: Continued regulation will distort and delay the benefits of competition in the wireless communications market. The State Movants do not wish to preclude consumers from reaping the benefits of a competitive industry. The concern is -- and the concern is supported by the record evidence relating to Connecticut -- that deregulation at this point will have the effect of impairing the transition to a competitive market. Despite the opponents' references to new competitors, those new entrants are not competing in any meaningful way in Connecticut yet, and the evidence shows that they will not be for some time to come. Thus, far from standing as an obstacle to Congress' goal of promoting competition in the place of regulation in wireless communications, the DPUC's Petition is aimed at achieving that goal. Obviously, the State Movants on the one hand and the Commission and the carriers on the other disagree on these questions of timing. The State Movants, however, have made a

sufficient showing to justify a stay. Without a stay, the State Movants will essentially be precluded from obtaining judicial review of its contention that its limited request for continued regulation will assist in the achievement of a competitive market, while compelling deregulation at this time will actually act as an impediment to the creation of a competitive market in Connecticut.

The fact that the State Movants did not seek reconsideration by the Commission is irrelevant. A petition for reconsideration is not a prerequisite for a stay or an appeal. The fact that the State Movants chose to forego the step of reconsideration and proceed directly with an appeal should have no effect on balancing the equities in determining whether the effect of the Order should be stayed while the State Movants pursue their appellate remedies. As the State Movants have shown that the balance of harms and the public interest weighs decidedly in favor of granting a stay, their request should be granted.

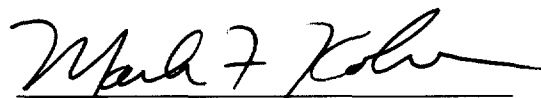
In response to the opponents' contentions that the State Movants' are not likely to succeed on the merits, the State Movants rely on their discussion in the Motion for Stay. As demonstrated there, the State Movants have made a sufficient showing of likelihood of success.

CONCLUSION

For the foregoing reasons, the State Movants request that the Commission stay its Order denying DPUC's petition until the resolution of their appeal.

CONNECTICUT DEPARTMENT OF
PUBLIC UTILITY CONTROL

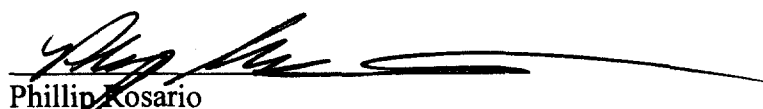
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July 27, 1995

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